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No. 79-1268

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

PATRICIA R. HARRIS,
SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant,

v.

CORA MCRAE, et al.,
Appellees.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE UNITED STATES CATHOLIC CONFERENCE AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF OF UNITED STATES CATHOLIC CONFERENCE AMICUS CURIAE

The United States Catholic Conference respectfully moves this Court for leave to file a brief *amicus curiae* in this case.

IDENTIFICATION AND INTEREST OF THE AMICUS

I.

Identification of the Amicus

The United States Catholic Conference is a non-profit corporation and an agency through which the Catholic Bishops of the United States collaborate with other members of the Church—priests, religious and laity—in areas where voluntary collective action on an

interdiocesan and national basis can benefit the Church and society.

USCC is an agency of the Catholic Bishops of the United States. Its predecessor, established in 1919, was known as the National Catholic Welfare Conference. The prime purpose of USCC is to unify and coordinate activities of the Catholic people of the United States in programs and works of education, social welfare, health and hospitals, family life, immigrant aid, poverty assistance, civic education, youth activities, communications and public affairs, with emphasis on the preservation of religious liberty in America.

II.

Interest of the Amicus in This Case

This case affects matters fundamental to our society. It is the conviction of this *amicus* that the Court can only be well served in matters of such wide import when it has assistance from all quarters. Thus, it is a spirit of service which prompts this *amicus* to make this submission.

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ARGUMENT

It is the view of this *amicus* that the questions presented in this case are controlled by this Court's decision in *Maher* v. *Roe,* 432 U.S. 464 (1977) and *Poelker* v. *Doe,* 432 U.S. 519 (1977). In *Maher* the Court noted:

> [T]he right [created by Roe v. Wade] protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy. It implies no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds.

432 U.S. 464, 473-74.

Law does more than simply regulate; law articulates the values to which we, as a society, subscribe. The values so articulated vary widely. Not all legislative judgments reach the deepest fibers of our social life. However, questions which meet the fundamental problems of human existence insinuate themselves in the most sublime fashion into all realms of human activity. The question of the value of human life is one such question.

Abortion, and its relation to the value of human life, raises profound moral problems, as has been recognized by this court in the Abortion Cases.[1] Those cases did not, and indeed, could not alter the moral character of the practice of abortion. Despite the legal effort of the Abortion Cases, Americans may nevertheless act on their conviction that abortion is immoral by denying financial support to the practice. Americans and their legal representatives still remain free to consider that the practice of abortion is immoral.

This Court has repeatedly found that legislatures have constitutional authority to act in furtherance of public morality. The Court noted in *Paris Adult Theatre I* v. *Slaton,* 413 U.S. 49 (1973):

> In deciding *Roth,* this Court implicitly accepted that a legislature could legitimately act on such a conclusion to protect the '*social interest in order and morality.*' Roth v. United States, 354 U.S. at 485, 77 S. Ct., at 1309, quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S. Ct. 766, 769, 86 L.Ed. 1031 (1952). (Emphasis in Roth.)

Id. at 61.

[1] *Roe* v. *Wade,* 410 U.S. 113 (1973); *Doe* v. *Bolton,* 410 U.S. 179 (1973).

Focusing on the abortion issue specifically, this Court stated in *Maher, supra,* that legislatures are free to take measures which reflect a life-affirming value:

> There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy.

432 U.S. at 475.

The decisions in the Abortion Cases[2] created an immunity from state interferences with the practice of abortion. They did not create an entitlement to benefits. *Maher* v. *Roe, supra,* at 476. The transformation of immunity into entitlement to draw upon the resources of the public treasury necessarily implies a social commitment to the affirmative value of such expenditures and necessarily requires a legislative expression of such commitment. *Poelker* v. *Doe, supra.*

As this Court noted in *Buckley* v. *Valeo,* 424 U.S. 1, 17 (1976), the expenditure of money is related to speech. It is clear, then, that funding is an expression of an affirmative social value. The "Hyde Amendment" is a limitation on the expenditure of public funds and exists because the commitment of those funds is inextricably bound up with the expression of public morality. The practice of abortion is perceived as morally abhorrent and the great public resistance to the expression of support for this practice is rooted in this perception.

As a nation we are faced with the question of the public funding of an act morally and socially objectionable to large segments of our society. Decisions of this

[2] *See* note 1, *supra.*

sort are historically considered matters for the legislative branch of government, not the judiciary. *Missouri, Kansas & Texas R. Co.* v. *May,* 194 U.S. 267, 270 (1904). At issue here is the vital interest of the body politic in the democratic process itself. Whether that interest is rooted explicitly in the Ninth amendment or is deemed as a more fundamental, implicit constitutional premise, it is imperative in a constitutional democracy such as ours that deference be given the people's right to shape their common values and institutions.

CONCLUSION

Because we believe that the issues presented herein have been settled by the cases of *Maher* v. *Roe* and *Doe* v. *Poelker,* we believe that the instant decision should be reversed.

Respectfully submitted,

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